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July 30, 1997

VIA HAND DELIVERY

Mr. William Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in In the Matter of International Settlement Rates, IB Docket No. 96-261

Dear Mr. Caton:

Telefónica Internacional de España, S.A. ("Telefónica Internacional") and Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"),[1] by their attorneys, submit this letter to supplement the record in the above-referenced proceeding. In this letter, Telefónica Internacional and TLD emphasize the following three concerns regarding the Commission's settlement rate benchmark proposals: (1) that these proposals are in part based on AT&T data which has only very recently been incorporated into the record, leaving little time for any of the parties to review and comment on them; (2) that these proposals are based on premises which the Commission has itself acknowledged to be faulty in other proceedings; and (3) that these proposals discriminate against foreign carriers in violation of the due process clause of the Fifth Amendment.

First, Telefónica Internacional and TLD are concerned that the Commission's proposal to base mandatory benchmarks on tariffed component prices ("TCPs") is itself partially based on data which AT&T filed with the Commission, together with a motion for protective order, only on July 22nd. This motion was both put on public notice and granted by the Commission the very next day. However, Telefónica Internacional was not served with a copy of this motion until July 24th. This is a highly irregular treatment for data which is unquestionably crucial to the

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[1] TLD hereby adopts the Comments and Reply Comments filed by Telefónica Internacional in this proceeding.

Commission's calculations and which the Commission reviewed more than six months ago in preparing the NPRM.

Even more important is the need to ensure that all parties to the proceeding have sufficient opportunity to review and comment on the AT&T data well in advance of a Commission Order. Telefónica Internacional's attorneys have reviewed the AT&T data. However, it is not readily apparent, even for the "uncomplicated example" of Argentina,[2] how the Commission used this data to calculate the national extension component of the TCP. Yet this proceeding is apparently slated for the agenda for the Commission's August 7th meeting, and thus all comments must be filed by July 31st. As a result, parties will have at most only one week to review, verify and analyze this data.

Second, Telefónica Internacional is concerned that the Commission's benchmark proposals are based on premises which the Commission itself has rejected in both its Access Charge Reform and Universal Service Proceedings.[3] As KDD points out in its letter dated June 5, 1997, jarring discrepancies between the Commission's Orders in these two proceedings and its mandatory benchmark proposals in the instant proceeding cast doubt on whether these proposals are consistent with both the Administrative Procedure Act, 5 U.S.C. § 706, and the United States' national treatment obligation under GATS. Of principal concern is the Commission's proposal in the Settlement Rate proceeding to use regulatory intervention to achieve cost-based settlement rates. This is in marked contrast to the Commission's Access Charge Order, where the Commission expressly decided that access charges should be determined by market forces and acknowledged that Commission-mandated rates would not only be inaccurate, but would also cause market distortions and harmful industry disruption.[4]

Equally troubling is the Commission's proposal to derive its mandatory benchmarks from a methodology it explicitly rejected in both its Access Charge Order and its Universal Service Order. In these Orders, the Commission stated that the methodology necessary to determine cost-based rates is simply not available.[5] As KDD points out, if the Commission cannot determine cost-based rates for U.S. carriers for

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2 International Bureau Report at 13-14 & Appendix D.

3 Access Charge Reform, CC Docket Nos. 96-262 et al., FCC 97-158 (rel. May 16, 1997) ("Access Charge Order"); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) ("Universal Service Order"); Letter to William Caton, Acting Secretary, Federal Communications Commission from Robert J. Aamoth, counsel to Kokusai Denshin Denwa Co. Ltd. ("KDD") (June 5, 1997) ("KDD Letter").

4 Access Charge Order at ¶¶ 45-46.

5 Access Charge Order at ¶ 44; Universal Service Order at ¶¶ 244-245.

whom it has all necessary cost data, it certainly cannot do so for foreign carriers where such data is unavailable.[6]

Additionally, the Commission's proposal to require foreign carriers to comply with its mandatory benchmarks within one to four years is significantly lower than the minimum five year transition period the Commission adopted in its Access Charge Order for incumbent local exchange carriers to adopt cost-oriented interstate access rates. The Commission cannot expect foreign carriers to adopt the necessary pro-competitive changes necessary to drive down accounting rates in significantly less time than it takes U.S. carriers to adopt similar changes.

Third, the Commission's proposal to impose mandatory cost-oriented benchmarks on foreign carriers violates the equal protection component of the due process clause of the Fifth Amendment.[7] In essence, the Commission seeks to impose FCC-determined "cost-based" rates on foreign carriers, thereby limiting what these carriers can receive for the service they provide in carrying half of a U.S.-originated international call. At the same time, however, the Commission refuses to impose similarly "cost-based" rates on U.S. carriers for the service they provide in carrying half a U.S.-originated international call. Such a blatant double standard would be both arbitrary and capricious, and unconstitutional.

Respectfully submitted,

Colleen Sechrest

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Colleen A. Sechrest
Counsel for Telefónica Internacional de España, S.A. and Telefónica Larga Distancia de Puerto Rico, Inc.

cc: Kathyrn O'Brien

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[6] KDD Letter at 6.

[7] Graham v. Richardson, 403 U.S. 365, 371-72 (1971) (holding that classifications based on alienage are inherently suspect); United States v. Verdugo-Urquidez, 494 U.S. 259, 271 (1990) (holding that aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with the country), Buckley v. Valeo, 424 U.S. 1, 93 (1976) (holding that the equal protection analysis in the Fifth Amendment is the same as that under the Fourteenth Amendment); Grosjean v. American Press Co., Inc., et al., 297 U.S. 233 (1936) (holding that corporations are "persons" within the meaning of the Fifth Amendment).